

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 254 of 1982

with

SECOND APPEAL No 255 of 1982

And

SECOND APPEAL No 302 of 1982

with

SECOND APPEAL No 336 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DHULABHAI N PRAJAPATI

MR B.D. DESAI, AGP for Appellant - State
MR SS BELSARE for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision:24/03/2000

COMMON C.A.V. JUDGEMENT

1. In all these four Appeals, common question of law

is to be decided and these Appeals were heard together and disposed of by this common judgment. The facts leading to the filing of these four Second Appeals are as under :

2. So far as Second Appeal No.254 of 1982 is concerned, the present respondent Nos. 1 and 2 filed a Civil Suit against present respondent No.3 and the appellant. As per the case of the appellant in this case, they were the agriculturists of land bearing Survey No. 121 situated at village Khandiya/Chalsmali, which was purchased by them under a Registered Sale Deed dated 2nd March, 1965 from the original owner i.e. Respondent No.3 and mutation entry was made in the Revenue Record. However, even then, the Deputy Collector, Chhota Udepur, initiated proceedings under Section 73A of the Bombay Land Revenue Code and held that the above sale in question was in contravention of Sec. 73A of the Bombay Land Revenue Code, which prohibited the transfer of such land belonging Adivasi without the approval of the competent authority and, therefore, Deputy Collector ordered eviction and regrant the said land in favour of transferor i.e. respondent No.3 herein. The plaintiffs preferred an Appeal before the Collector, who confirmed the order of the Deputy Collector. Revision Application was also preferred, but the same was dismissed and hence, the plaintiffs filed Regular Civil Suit No. 1274 of 1974 in the court of Jt. Civil Judge (SD), Vadodara. It was decreed in the favour of the plaintiffs i.e. respondents No. 1 and 2 herein declaring that the orders passed by the revenue authorities so far as relating to Section 73-A of the Bombay Land Revenue Code were null and void and the State Government was restrained from taking any action under the said order against the plaintiffs. The Defendant No.2 i.e. respondent No.3 herein also was restrained. First Appeal was filed by the State of Gujarat, which was also dismissed by the District Judge at Vadodara being Regular Civil Appeal No. 480 of 1980.

3. So far as Second Appeal No.255 of 1982 is concerned, the present respondent No.1 i.e. original plaintiff is an agriculturist, cultivating the land of village Khandiya/Chalamali, bearing survey No. 42/4, situated at village Khandiya of Chhota-Udepur taluka and the respondent No.1 herein purchased the said land by registered sale deed dated 2.3.1965 from Respondent No.2 herein. Necessary mutation entries were made in the revenue record regarding the sale of land. However,

thereafter, Deputy Collector, Chhota-Udepur, initiated proceedings under Sec. 73A of the Bombay Land Revenue Code and held that the sale in question was in contravention of Section 73-A of the Bombay Land Revenue Code, which prohibited the transfer of such land belonging to Adivasi without the approval of the competent authority and, therefore, he ordered eviction of the plaintiff and regranted the said land in favour of transferor i.e. respondent No.2 herein. Hence, Appeal was filed before the Collector by the plaintiff, but the same met with the result of dismissal. A Revision Application also met with the same fate and, therefore, a Regular Civil Suit No. 1275 of 1974 came to be filed by the present respondent against the State Government and respondent No.2 herein being the original owner of the land for declaration in the Court of Jt. Civil Judge (SD), Baroda, which came to be decided vide judgment and decree dated 27th October, 1978 decreeing the suit and declaring that the order of revenue authorities evicting the plaintiff so far as the same relating to Section 73A of the Bombay Land Revenue Code were null and void. The orders of the revenue authorities declaring the transfer in valid was also declared void. The State Government as well as original defendant No.2 i.e. respondent No.2 herein was restrained from taking possession of the land from the plaintiff i.e. present respondent No.1 herein. The State Government preferred an Appeal against the above said order in the Court of District Judge, Vadodara, being Regular Civil Appeal No. 509 of 1980, and the Extra Assistant Judge, Vadodara, vide its order dated 1st February, 1982 came to be dismissed the Appeal and, therefore, the State has filed the present Second Appeal.

4. So far as the Second Appeal No. 336 of 1982 is concerned, the respondent No.1, according to his case, he was an agriculturist and he was cultivating the land at village Khandiya Chalamali, bearing survey No. 184/2, situated at village Khandiya of Chhota-Udepur taluka and the said land was purchased by respondent No.1 herein by Registered Sale Deed dated 11th April, 1968 from original owner i.e. respondent No.2 herein. Necessary mutation entries were carried out in the revenue record, however, the Deputy Collector, Chhota Udepur initiated proceedings under Section 73-A of the Bombay Land Revenue Code and ultimately came to the decision that the said transfer of land was in contravention of Section 73A of the Bombay Land Revenue Code and hence the Dy. Collector declared the sale to be invalid and regranted the land to the original owner i.e. respondent No.2 herein. Against which, the respondent No.1 filed an appeal before the

Collector, who dismissed the same and Revision Application preferred to the Government also came to be dismissed. Therefore, being aggrieved, the respondent No.1 herein filed Regular Civil Suit No. 1276 of 1974 in the court of Civil Judge, Senior Division, Vadodara, for a declaration that the orders of the revenue authorities were null and void. After the trial, the Civil Judge, Senior Division, Vadodara, decreed the suit vide its judgment and decree dated 27th October, 1978, with declaration that the order passed by the Revenue Authorities so far as the same related to Section 73A of the Bombay Land Revenue Code was null and void. It was also declared that the orders of the revenue authorities declaring that the transfer in valid were also declared null and void. It was further decreed that the State Government and respondent No.2 herein were restrained from taking possession of the said land from the plaintiff i.e. respondent No.1 herein. Being aggrieved by this judgment, the State Government filed an appeal before the District Court at Vadodara, being Regular Appeal No. 410 of 1980. Learned Extra Assistant Judge at Vadodara heard the appeal and ultimately dismissed the same vide its order dated 11th February, 1982 and hence this Second Appeal has been preferred by the State of Gujarat.

5. So far as the Second Appeal No. 302 of 1982 is concerned, respondent No.1 herein was an agriculturist and he purchased land bearing Survey No. 12 (old) and 7 (new), which were situated at village Ambapura, Taluka Naswadi, District Vadodara, from respondent No.2 herein i.e. the original defendant No.2 by a registered sale deed executed on 31st July, 1963. After the same, necessary entries were made in the revenue record. However, even then, the Assistant Collector, Dabhoi, initiated proceedings against the respondent No.1 herein under Section 73-A of the Bombay Land Revenue Code and ordered eviction under Section 73A of the Code. The respondent No.1 herein preferred Appeal to the Collector, Vadodara, who allowed the Appeal and set aside the order of the Assistant Collector, Dabhoi on 1st October, 1971. However, the matter was taken in revision to the Deputy Secretary, Revenue, who set aside the order of the Collector, Vadodara on 30th June, 1975 and held that the transaction between the respondents No. 1 and 2 herein relating to the above said sale was hit by Section 73-A of the Bombay Land Revenue Code and was covered by Notification dated 4th April, 1961. Ultimately, the Deputy Secretary (Revenue) remanded the matter for necessary action under Section 73(A) and to regrant the land to respondent No.2 as he belonged to schedule tribe.

Being aggrieved, the respondent No.2 herein filed a Regular Civil Suit against the State and against the owner i.e. respondent No.2 herein being Regular Civil Suit No. 1049 of 1975 in the Court of Civil Judge, Senior Division, Vadodara for a declaration and the learned Civil Judge, Senior Division, Vadodara after trial, came to the conclusion vide his judgment and order dated 30th January, 1980 declaring that the order of the Deputy Secretary, Revenue, passed on 30th June, 1975; and Revision Application setting aside the order of the Collector, Vadodara, made in Appeal on 1st October 1971 was null and void and illegal and inoperative and was not binding on the plaintiff. Being aggrieved, the State has filed the Appeal in the Court of District Judge at Vadodara, being Regular Civil Appeal No. 227 of 1980 and Third Extra Assistant Judge at Vadodara, heard the Appeal and vide its judgment and order dated 15th March, 1982, came to dismiss the Appeal and hence this Second Appeal by the State of Gujarat.

6. These were the facts in all the above four Second Appeals.

7. Learned APP Mr. B.D. Desai, on behalf of the State and learned Advocate Mr. S.S. Belsare on behalf of the respondents here were heard.

8. In all the four appeals, the following substantial questions of law which have arisen are as under :

1. Whether in the facts and circumstances of the case, the lower appellate court has substantially erred in law in not holding that the Section 73A of the Code prohibits transfer of lands belonging to Adivasi without the permission of the competent authority and, therefore, the order of eviction passed against the plaintiff and regrant of the land in favour of the defendant No.2 was perfectly legal and valid.
2. Whether in the facts and circumstances of the case, the lower appellate court has substantially erred in law in holding that the survey settlement had taken place in village Khandalya under the provisions of the Code.
3. Whether in the facts and circumstances of

the case, the lower appellate court has substantially erred in law in holding that the proceedings u/s 73-A of the Code should have been commenced by the Deputy Collector, Chhota Udepur.

9. The question which arises for determination is Section 73-A would be applicable to the lands covered under these four Appeals. The State Government is empowered under Section 73-A to declare any tract or village occupancy is to be nontransferable without the previous sanction of the Collector, but the State Government can publish this declaration only before settlement of revenue assessment as per Section 103. Section 103 of the code has been repelled and Chapter VIII is inserted in the Bombay Land Revenue Code, which deals with the assessment of revenue and its settlement. Plain meaning of the above provision is, where there is no revenue settlement done in accordance with the provisions of the Code in such areas i.e. in such tract or villages, Government may by a notification declare occupancy is not transferable without the previous sanction of the Collector. As per the case of the State Government, vide Notification dated 4th April, 1961, the provision of Section 73-A was made applicable to all those villages in the schedule area in the State of Gujarat, in which survey settlement under the said Code has not been introduced. Therefore, in these four appeals, the crucial question is whether before issuing this notification, applying Section 73-A to certain parts of State of Gujarat whether revenue settlement was done for the lands covered under these four appeals.

10. So far as the facts and the evidence of the cases in Appeals No. 254, 255 and 336 are concerned, a witness Kodarlal Mithalal Kadia, serving in the settlement Commissioner and Director of Land Record, Ahmedabad, was examined. At first instance, this witness stated that the revenue settlement was made by the native states and, therefore, it was deemed to be a settlement. But, he further qualifies that this settlement was not under Chapter - VIIIA of the Code and, therefore, that was ad hoc settlement, but, in cross-examination, the witness admits that there was remission in the revenue settlement. This remission was permitted when there was settlement of the land by Udepur State to be shown in village Form No.1, which denotes that there was settlement by Udepur State so far as the lands covered by these three Appeals are concerned. In these three Appeals, original plaintiffs have produced their old

revenue records which also denotes that there was a revenue settlement by the then Udepur State. This law point has been decided by this court in the matter of BHANABHAI BHIKHABHAI vs. BABUBHAI NARANSINGH & OTHERS, reported in 15 GLT at page 144. This court in the aforesaid decision ruled that proviso to clause (5) of the Indian States (Application of Laws) Order, 1948, is clear that the repeal by the order of any enactment shall not effect the validity, liability, etc. already acquired, accrued or incurred under State Laws. It is also further clear that by virtue of this provision, the survey settlements already effected in the merged States under the corresponding laws will be saved. Therefore, once it is proved that the revenue settlement was already done by the native state for the land covered by this three appeals, then as per Section 73A itself, the provision of Section 73A would not be made applicable by the State Government to such lands. On facts, it is proved that the revenue settlement was done by the Chota Udepur State for the lands under the three Appeals long back and when a Notification was issued under Section 73A of the Bombay Land Revenue Code a revenue settlement was in force and hence, the provision of Section 73A cannot be made applicable to such lands because as stated above the revenue settlement was done by the native state would be deemed to have been made under the Bombay Land Revenue Code.

11. So far as the Second Appeal No. 302 of 1982 is concerned, the land belongs to Ambapura taluka, native District Vadodara. So far as facts of this case is concerned, the original jagirdar of the village Ambapura, Balvantsingh Jethisingh Chauhan (Exh.38) has been examined. He has deposed that the land in question was surveyed and settled since the year 1936. He has produced records at Exhibits 39 and 40. Therefore, so far as the land covered by this appeal is concerned, it is also proved that the revenue settlement was done in 1936 and since revenue settlement had already been done, Section 73A cannot be made applicable to the land covered by this Appeal because the provision of Section 73A can be made applicable to the lands for which no revenue settlement has been done as per the Bombay Land Revenue Code.

12. Therefore, in all the above four appeals, revenue settlements were made by the native states and as per clause (5) of the Indian States (Application of Lands) order 1948, this revenue settlement must be deemed to be revenue settlement under the Bombay Land Revenue Code and this being the legal position, the State Government

cannot make the provisions of Section 73A applicable to the lands covered in these four appeals. In this view of the matter, the trial court as well as the first appellate court were right in decreeing the suits of the plaintiff and declaring that the revenue authorities are not competent to take action against the lands covered under these four appeals under, Section 73A. Hence, the substantial questions of law raised have been replied accordingly.

13. In the result, all these four appeals bearing Second Appeal Nos. 254 of 1982, 255 of 1982, 302 of 1982 and 336 of 1982 stand dismissed with no order as to costs.

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